

## **MINUTES**

### **BOARD OF ADJUSTMENT**

#### **TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY**

Regular Meeting

February 27, 2014

The Regular Meeting of the Board of Adjustment was called to order at 7:30 PM in the Public Meeting Room.

It was confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted in Town Hall, Board Office, and supplied to the Township Clerk at least forty-eight hours prior to the meeting. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

#### **Oath of Public Officers – Newly Appointed Members:**

Mr. Patrick Henry – 4-year term to end 12/31/2017

Mr. Bernstein administered the oath of office to Mr. Henry prior to the meeting.

#### **Roll Call:**

Members present were Mr. Bussiculo, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Sullivan, Mr. Henry, and Mr. Delia. Mr. Daniel Bernstein, Board Attorney, was also present.

#### **Informal Review of New Application:**

##### **App. #10-14: Ilir & Loreta Bitici, 51 Mercier Place, Block 3002, Lot 14 (R-20 Zone)**

Proposed principal additions to the existing single-family dwelling. Relief is needed from Section 6.1.1B, "Schedule of General Regulations" for 1) principal rear-yard setback (allowed: 40', existing: 19.83', proposed: 18.42'); 2) minimum principal side-yard setback (allowed: 12', existing: 29.06', proposed: 7.08'); 3) maximum building coverage (allowed: 15%, existing: 8.11%, proposed: 20.82%); 4) maximum "other" coverage (allowed: 10%, existing: 11.55%, proposed: 10.49%) and 5) maximum total coverage (allowed: 25%, existing: 19.64%, proposed: 31.26%). Also, Section 8.1.1 prohibits the expansion of a non-conforming structure. Nonconforming issues are lot area, lot depth, existing principal rear-yard setback and existing "other" coverage.

Mr. and Mrs. Bitici stated that they have a two bedroom, 1100 square foot ranch and want to expand to a three bedroom with additional storage and a two-car garage. The expansion will involve the living room, kitchen and dining room. Mr. Bitici indicated on the plan the location of the 7' side yard setback and said there is a single family home next door.

James Ramentol, architect, stated that currently the house has a detached one-car garage and the applicant wants a two car garage which will cause the 7' setback. The shed on the property has been removed.

The applicant was asked to provide photographs showing the house next door and the impact of the addition on them. It was also noted that there is concern about the evergreen trees being removed and the applicant should consider some re-planting.

Mr. Ramentol advised that two of the trees are dead but the applicant will look at adding some additional plantings. The drainage will also be addressed.

The application was deemed complete and scheduled for hearing on March 13, 2014 with appropriate notice to be sent.

**Applications for Review:**

**App.#6-14: Charles & Barbara Radcliffe – 32 Cedar Green Lane, Bl.3001, L.11 (R-20 Zone)**

Proposed second story addition over an existing first floor single family dwelling and a new front portico over the existing front porch. Relief is needed from Section 6.1.1B "Schedule of General Regulations" due to an insufficient front-yard setback (required: 50', existing: 44.1', proposed 2<sup>nd</sup> story addition: 44.1' and proposed portico: 40' setback). In addition, Section 8.1.1B.1 prohibits the enlargement of a nonconforming structure. Existing nonconforming conditions are: principal front-yard setback and principal side-yard setback.

Barbara and Charles Radcliffe were sworn and stated that they want to add a second floor to their existing one story ranch. What they are proposing is going to be one floor but it will not be over the garage. There is no change in the footprint of the house proposed; they are just adding an extra floor for bedrooms and storage space. Their architect requested that they obtain the variance before he does the drawings.

Discussion took place regarding whether the Board can proceed without architectural drawings. Mr. Bernstein advised that the Board can determine that

the plans are not complete and that architectural plans and exterior elevations are needed.

Mrs. Radcliffe stated that they are going for a salt box look and they have an architect working on the drawings.

The consensus of the Board members was to require the plans and elevations.

The application was carried to March 13, 2014 with no further notice required.

**App.#8-14: John & Allison Murphy, 86 Delmore Avenue, Block 401, Lot 36 (R-15 Zone)**

Proposed second-story addition above an existing nonconforming first story of a single-family dwelling. Relief is needed from Section 6.1.1B, "Schedule of General Regulations" due to the insufficient side-yard and combined side-yard setbacks. In addition, Section 8.1.1B.1 prohibits the expansion of a nonconforming structure and Section 6.3.10C requires that a garage be built when a new addition brings the total floor area of the dwelling to above 1700 square feet. (The home does not have a garage.) Existing nonconforming issues are lot area, lot width, principal front-yard setback, both principal side-yard setbacks, combined side-yard setbacks, existing "other" coverage, shed location, accessory rear-yard setback and driveway less than the required 5' minimum from the property line.

Allison and John Murphy were sworn. Larry Korinda, architect, was sworn, gave his professional background and was accepted as an expert witness.

Mr. Korinda stated that this is a second floor addition on the rear of a cape-cod house that is on a narrow, undersized lot. There is no footprint change and no new foundation work. Variances are being requested for side yard setback, combined side yards, no garage on a residential property and expansion of a non-conforming structure.

In response to questions from the Board, Mr. Murphy stated that there is a large tree that would have to come down if they were required to have a garage. There is an existing 8 x 12 non-conforming shed that is up against County property that could be moved if required.

Mr. Korinda presented Exhibit A-1 - photo board containing photos of the residence from the front, rear and the sides and showing the house to the right and to the left. The photos show that what is proposed would be compatible with the neighborhood.

In response to further questions from the Board, Mr. Korinda stated that all siding will be replaced and there will be a new roof. No trees are being taken down, most of the houses on the street do not have garages and the proposal will add 213 square feet to the house. Mr. Korinda stated that it would cost approximately \$40-50,000 to put in a new driveway, move the deck stairs and build a garage.

The consensus of the Board was in favor of waiving the garage requirement.

### **Open to Public**

The hearing was opened to the public for questions or comments regarding the application. There were no members of the public who had questions or comments and the hearing was closed to the public.

A motion was made by Mr. Miller, seconded by Mr. Delia, to approve Application #8-14: John & Allison Murphy, 86 Delmore Avenue, Block 401, Lot 36 (R-15 Zone), including variances for shed location, driveway location and no garage, subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board at a future meeting. The voice vote was 6-1 in favor with Mr. Bussiculo, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Henry, and Mr. Delia voting in favor. Mr. Sullivan was opposed.

### **App.#7-14: Jennifer Muhs & Mahmoud Abdalla – 331 Diamond Hill Rd., Bl.4502, L.10 (R-20)**

Proposed one-story principal addition (611 sq. ft.) with a deck landing and stairs to grade. The addition does not conform to the required principal side-yard setback (required: 12', existing: 14.4', proposed: 9.5' to the proposed new deck landing and stairs) and combined side yard setbacks (required: 30', existing: 25.6', proposed: 20.7'). Nonconforming issues are lot area, lot width, principal front-yard setback, principal side-yard setback, and combined principal side-yard setbacks.

Jennifer Muhs and Mahmoud Abdalla were sworn and stated that they want to put an addition on the back of their house to be used as in-law suite for Mr. Abdalla's parents.

Discussion took place with regard to the Board's concerns that this could be construed as a two-family home. Mr. Bernstein advised that the Board usually requires that there not be a second kitchen or separate exterior access.

Ms. Muhs advised that they do not plan to put in a second kitchen.

Andrew Podberezniak, architect was sworn, gave his professional background and was accepted as an expert witness. Mr. Podberezniak stated that the side yard setback is a pre-existing non-conforming condition, the deck stairs will not be covered, there will be no kitchen and this will be like a master bedroom suite with a bedroom, sitting room and bathroom. The applicant would agree to not have a separate outside entrance.

In response to questions from the Board, Mr. Podberezniak stated that the siding will match the rest of the house, no trees are to be removed, there is no shed on the property, drainage will be subject to approval of Township Engineer and the stairs and outside entrance will be eliminated.

### **Open to Public**

The hearing was opened to the public for questions or comments regarding the application. There were no members of the public who had questions or comments and the hearing was closed to the public.

A motion was made by Mr. Smith, seconded by Mr. Henry, to approve Application #7-14: Jennifer Muhs & Mahmoud Abdalla – 331 Diamond Hill Rd., Bl.4502, L.10 (R-20), subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board at a future meeting. The voice vote was unanimous with Mr. Bussiculo, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Sullivan, Mr. Henry and Mr. Delia voting in favor. There were none opposed.

### **--CARRIED FROM JANUARY 29, 2014, WITHOUT FURTHER NOTICE:**

#### **App.#4-14: Berkeley Heights Realty, Inc., 525 Springfield Ave., Bl. 611, L. 7 (HB-3 Zone)**

Proposed canopy, kiosk on the pump island for service station use, addition to the approved pole sign, and three signs on the canopy structure. The applicant appeared before the Board in 2013 (App.#26-12: Ilya Shlakman) to obtain the necessary approvals. A Certificate of Prior Nonconforming Status of the gasoline service station and repair garage was granted by the Board of Adjustment.

Michael Mistretta, Township Planner, was sworn, gave his professional background and was accepted as an expert witness. Mr. Mistretta stated that he has prepared a report dated February 27, 2014 and the applicant has submitted a revised set of plans addressing some of his comments. The applicant is

proposing a canopy, an aluminum kiosk that will serve as a station for the attendant, and an addition to the free standing sign that require a number of variances. He noted that this is very important property at a key intersection of town. The canopy and kiosk are an expansion of a non-conforming use.

Mr. Mistretta reviewed the variances required by the ordinance as well as the requirements of the downtown design standards that need to be addressed. The applicant is required to provide a checklist or statement on how they will comply with the design standards and the applicant has asked for a waiver of that requirement. The applicant has provided pavers but there are many other issues to be addressed in the design standards.

Mr. Mistretta stated that he feels strongly about the design standards and would recommend full compliance with the downtown design standards including the checklist. He said there are other projects in the downtown area currently under construction or in design stages that are complying with the design standards.

Mark Williams, attorney for the applicant, stated that the applicant has a non-conforming use, the structures were on the property prior to the ordinance and the lot is too small for the zone. In addition, the building is in the front and the gas pumps are too far forward on Springfield Avenue to accommodate the ordinance. Another factor that triggers the variances is the changes that have occurred in the gas station industry in the last 60 years. Most gas stations now have a canopy and the purpose of the canopy is for safety and shelter. The kiosk is also used for shelter by the attendant and for the credit card machine. The canopy will be 44 x 48 with two islands and four lanes of traffic and that is why it is needed where it is. The height of the canopy is standard in the industry.

With regard to the free standing sign, Mr. Williams stated that the applicant obtained approval from the board for the sign and then found out that diesel sales are needed in this area so a decision was made to add diesel and to advertise it. That is why the applicant is requesting additional signage for the diesel price. The proposed Enrite signage on the canopy will not be lit and the colors will comply with the downtown standards. The kiosk can be made to be consistent with the downtown standards.

Ilya Shlakman, applicant, presented Exhibit A-1 – photograph of the Getty station previously on the site, and Exhibit A-2 – a gas station in Denville which shows lighting comparable to what is being proposed here.

Discussion took place regarding whether the canopy is a structure or a fixture. Mr. Mistretta stated that in his opinion it is an accessory structure which is not permitted in the front yard.

Mr. Shlakman presented Exhibits A-3 and A-4 – photographs of the Gulf station showing their canopy and kiosk. He said they would be willing to take down the free standing sign and put up an old-fashioned sign that is the same as was there before.

Discussion took place regarding the free standing sign and the applicant's need to advertise the diesel price. Board members expressed concern about the intensity and color of the LED sign. It was suggested that a softer color or white be used.

Mr. Mistretta presented Exhibit BA-1 – photograph of an Enrite gas station that has white gas signs.

Steven Kutch, engineer, was sworn, gave his professional background and was accepted as an expert witness. Mr. Kutch stated that ground signs do not work because they cannot be seen. People buy according to price and it is important that people be able to see the prices. LED signs have a certain glare so they could change to incandescent lighting in red or white but they have to have green for diesel.

Mr. Kutch stated that he will see if he can find a sign that the Board members can look at as an example of what they propose. He will look at the options and come up with a design that will be satisfactory to the Board. He will work with Mr. Mistretta on the sign and the kiosk.

### **Open to Public**

The hearing was opened to the public for questions or comments regarding the canopy portion of the application.

Charles Santore presented Exhibit S-1 – photograph of a gas station on Route 22 in Watchung with a similar canopy and sign that he believes would look a lot better. He also suggested that the Delta station in Gillette is another good example. He further suggested that the letters be smaller so that they could fit the additional diesel price in the same size sign.

Mr. Williams stated that the applicant will review the lighting and the engineer will provide information on some sites that Mr. Mistretta and the Board members can look at. Mr. Kutch will also work with Mr. Mistretta on the materials for the kiosk.

### **Open to Public**

The hearing was opened to the public for questions or comments regarding the kiosk portion of the application.

Charles Santore said he has no objection to the kiosk but would ask that it match the building and not have a bright light inside.

The hearing of Application #4-14 was carried to March 27, 2014 with no further notice required. The applicant granted an extension if needed.

### **Adoption of Resolutions:**

#### **App.#2-14: Leonard & Elizabeth DeBotton, 106 Briarwood Dr. E., Block 1401, L.30 (R-15)**

Proposed two-story addition on corner lot with two principal front-yard setbacks. Relief is needed from Section 6.1.1B, "Schedule of General Regulations" for encroaching into the required front-yard setback on Ridgewood Ave. (required: 50', existing: 34.8'; proposed: 30.2') and on Briar-wood Dr. E.(required: 50'; existing: 40.4', proposed: 40.4'). Existing nonconforming issues are lot area, lot width, principal front-yard setbacks along both street fronts, and existing shed location.

A motion was made by Mr. Smith, seconded by Mr. Sullivan, to adopt the above Resolution. The voice vote was unanimous with Mr. Bussiculo, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Sullivan and Mr. Delia voting in favor.

#### **App. #3-14: August & Marie Pellegrini, 21 Columbus Ave., Block 509, Lot 4 (R-15 Zone)**

Proposed free standing pergola type roofed structure (10' x 12' x 12'H or 120 sq. ft.) with four open sides results in coverage limits being exceeded. Relief is needed from Section 6.1.1B "Schedule of General Regulations" for Other Coverage (permitted: 10%; existing: 9.44%; proposed: 10.15%) and Total Lot Coverage (permitted: 25%; existing: 24.72%; proposed: 25.43%). Building Coverage is an existing, nonconforming issue.



A motion was made by Mr. Delia, seconded by Mr. Boyer, to adopt the above Resolution. The voice vote was unanimous with Mr. Bussiculo, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Sullivan and Mr. Delia voting in favor.

**App.#5-14: Steven & Anne Marie Weisman, 164 Spring Ridge Dr., BI. 2001, L.11 (R-15 Zone)**

Proposed one-story principal addition, new deck, and expanded covered front porch. The existing sidewalk will be replaced with a new sidewalk. Relief is needed from Section 6.1.1B, "Schedule of General Regulations," for exceeding allowed building coverage of 15% (existing: 13.57%, proposed: 18.80%). The maximum 25% total lot coverage would also be exceeded (existing: 21.61%, proposed: 27.15%).

A motion was made by Mr. Smith, seconded by Mr. Miller, to adopt the above Resolution. The voice vote was unanimous with Mr. Bussiculo, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Sullivan and Mr. Delia voting in favor.

**Adoption of Minutes**

January 9, 2014  
January 29, 2014

A motion was made by Mr. Smith, seconded by Mr. Miller, and carried by unanimous voice vote to adopt the minutes of the January 9, 2014 Executive Session and the January 29, 2014 Regular Meeting as presented.

**Adjournment:**

A motion was made by Mr. Boyer, seconded by Mr. Delia, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 10:18 PM.

Regina Giardina, Secretary Pro Tem